IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

(1) Appeal (Ld) No.528 of 2004
in
Writ Petition No. 2798 of 2002
a n d

(2) Appeal (Ld) No.529 of 2004
in
Writ Petition No.3017 of 2002

Shri Navinkumar Tiwari ..Appellant

vs.

1. Hyderabad Sindh National
College Board & Ors. ..Respondents

Shri K.S.Bapat for appellant
Shri Chandnani for respondents.

CORAM: A.P.SHAH &
S.J.VAZIFDAR JJ.
31st January, 2005

P.C.

1. These appeals are directed against the common order passed by S.U.Kamdar J. on 8th April, 2004 in Writ Petition No.2798 of 2002 and Writ Petition No.3017 of 2002. The appellant was working as a peon in one of the colleges run by the respondents being Thadomal Shahani Engineering College. In the examination conducted in December, 1996, for Second Year Engineering for Semester IV in the faculty of Electronics Engineering, it was revealed that the marks of one of the students were tampered with and altered from 7 to 17 though the question specified was only of 10 marks. On the basis of the alleged

act of tampering a chargesheet was issued to the appellant for the aforesaid misconduct under the relevant provisions of the Standard Code Rules, 1994 and he was removed from service vide letter of termination dated 5th May, 1999. The appeal preferred by the appellant to the University and College Tribunal came to be dismissed. In Writ Petition No.581 of 2000 the termination was set aside and the college was directed to consider the matter afresh by another authority other than the Principal of the college and the matter was remanded for fresh enquiry.

2. Pursuant to the above order, enquiry was conducted afresh and after conclusion of the same show cause notice was issued to the appellant and after considering his reply, fresh termination order was issued by the newly constituted Disciplinary Authority.

3. The appellant, thereafter moved the College Tribunal by filing Appeal No.59 of 2000. The said appeal was heard by the College Tribunal and the College Tribunal recorded a finding of fact that the material produced on record is sufficient for dismissal of the employee. The Tribunal, however, held that by virtue of non compliance of the

sub-rule (2) of Rule 51 of the Standard Code Rules the order of dismissal is invalid and liable to be set aside. The Tribunal, however, refused to grant reinstatement and directed the respondents to pay to the appellant 75% of 6 months emoluments excluding transport allowance instead of reinstatement. Against the judgment and order of the Tribunal two writ petitions were filed being Writ Petition Nos.2798 of 2002 and 3017 of 2002. In Writ Petition No.2798 of 2002, the college challenged the finding of non compliance of Rule 51 of the Standard Code Rules whereas in Writ Petition No.3017 of 2002 the appellant employee has challenged the order in so far as it does not direct reinstatement in service with full back wadges. By the impugned order writ petition filed by the College was allowed by the learned single Judge whereas the writ petition of the employee was dismissed and hence the present appeal.

4. Shri Bapat, learned Counsel appearing for the appellant raised three submissions before us. First submission of Shri Bapat is that College Tribunal has not applied its mind in arriving at the finding that the appellant was guilty of misconduct and has not applied its mind to various aspects of the matter which were raised before the

Tribunal. We do not find any merit in the submission of Shri Bapat. The appellant was found guilty of the alteration in the marks of answersheet of one of the students. Evidence produced in the enquiry was considered by the Tribunal in para 15 of the judgment and the Tribunal has found on appreciation of evidence that there is sufficient material before the management to come to the conclusion that there is alteration in the marks of one of the students. We do not find any perversity in the reasoning of the Tribunal.

5. The second submission of Shri Bapat is based on non compliance of sub-rule (2) of Rule 51. According to Shri Bapat, non compliance vitiated the entire enquiry and, therefore, appellant is entitled to full backwages and reinstatement. Rule 51(2) reads as under:

> "(2) The competent Authority, after completing the procedure of departmental enquiry, comes to the conclusion that the employee should be compulsorily retired or removed from the service, it shall give three months' notice in case of employee in Class I, Class II or Class II, service and

one month’s notice in case of an employee in Class IV service."

6. On a plain reading of the Rule it is clear to us that the provisions of the Rules came into action only after the conclusion of the disciplinary proceedings and after coming to the decision that the employee is required to be dismissed from the job. Mere absence of issuance of notice under Rule 51(2), therefore, does not in any manner vitiate the conduct of enquiry by the college. The learned single Judge has rightly held that Rule 51(2) is not a condition precedent and non compliance thereof would not render the enquiry illegal.

7. Last contention of Shri Bapat is that under sections 31 and section 32(6) of the Maharashtra Universities Act, 1994, the power to conduct enquiry is solely vested in the University or the Board of Examiners of the University and the provisions of the Standard Code has no applicability. The learned single Judge has rightly pointed out that the said provisions give power to the University to take action if any mal practice is found by the University in connection with the examination. This power is an independent

power of the University and it does not in any manner affect the power of the College Authority to conduct departmental enquiry under the Standard Code if college authority has found that there is misconduct on the part of the employee in their college.

8. In the result, both the appeals stand dismissed.